U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
APR 28 2005
AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk - Syracuse

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

****
UNITED STATES OF AMERICA,

-vs-

Criminal 04-CR-544 (TJM)

STIPULATION AND ORDER FOR SALE OF SPECIFIC STOCKS HELD IN INVESTMENT ACCOUNTS

KUN FUK CHENG,
a/k/a STEVEN CHENG,
JIN RONG CHENG,
a/k/a JOYCE CHENG,
and HUI GUO,

Defendants.

****

THE UNITED STATES ATTORNEY, by and through Assistant U.S. Attorneys Sara M. Lord and Thomas A. Capezza, defendant Kun Fuk Cheng, a/k/a Steven Cheng, by and through his attorney, Brian Devane, Esq. hereby stipulate and agree as follows:

1. On November 17, 2004, a Federal Grand Jury sitting in the Northern District of New York returned an Indictment (hereinafter the "Indictment") in Criminal No. 04-CR-544. The Indictment charges defendant Kun Fuk Cheng, a/k/a Steven Cheng, with violations of 8 U.S.C., §§1324(a)(1)(A)(v)(I), 1324(a)(3)(A), 18, U.S.C. § 2 and 18 U.S.C. §1956(h) and seeks

criminal forfeiture of, among other things, Charles Schwab Accounts pursuant to 18 U.S.C. § 982(a)(6)(A), 8 U.S.C. § 1324(b)(1) and 28 U.S.C. §2461(c)

2. Included in the Indictment is a forfeiture allegation relating to Counts 1 through 3 which includes a money judgment and seeks forfeiture to the United States of America of both real and personal properties and in the absence of such property, seeks forfeiture of substitute assets.

3. The Forfeiture Allegation against defendant Kun Fuk Cheng, a/k/a Steven Cheng, as set forth in the Indictment, seeks forfeiture of the Property on the grounds that it constitutes or was derived from; was used to facilitate or was intended to be used to facilitate one or more of the charged offenses and/or constitutes or is traceable to proceeds obtained directly or indirectly from one or more of the charged offenses.

4. On November 18, 2004, the United States filed Restraining Orders against certain investment accounts. More specifically, Charles Schwab Account # : XXXX-3818, in the name of Kun F. Cheng & Jin Rong Cheng. The Government contends that Kun Fuk Cheng, a/k/a Steven Cheng has an interest in Charles Schwab Account # : XXXX- 3818 and that his interest is subject to criminal forfeiture to the United States, as set forth in the Indictment.

5. The defendant, Kun Fuk Cheng, a/k/a Steven Cheng, requests that he be allowed to sell all current holdings of AMD stock and all current holdings of SMI stock held in the Charles Schwab Account # : XXXX-3818.

6. Upon completion of certain due diligence research to ensure that the interests of the United States in the Properties are adequately protected, and consultation with the various counsel connected with the proposed sale, the United States agrees with the undersigned to allow the proposed sale of all current holdings of AMD stock and all current holdings of SMI stock held in the Charles Schwab Account # : XXXX-3818 to go forward, subject to the full and complete satisfaction of the agreed-upon conditions set forth below.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, through their respective counsel, that:

1. The defendant, Kun Fuk Cheng, will only be allowed to sell all the current holdings of AMD stock and all the current holdings of SMI stock currently restrained in Charles Schwab Account # : XXXX-3818. The proceeds from the sale of AMD and SMI will serve as the forfeitable res in lieu of the subject stock.

2. The defendant agrees that immediately following the sale of the AMD and SMI stock, Charles Schwab is authorized to take the "gross proceeds" of the AMD and SMI stock sales, less any nominal sales commissions and payment of any outstanding margin loans, and issue a check payable to the U. S. Customs and Border Protection. This check will then be sent to the attention of Special Agent Jay Hamilton at the U. S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Leo O'Brien Building, Room 746, Clinton and North Pearl Street, Albany, New York 12207. Upon receipt of the funds from the

sale of the AMD and SMI stock, the funds will be placed in the Customs Suspense Account where they will remain until disposition of this criminal matter.

2. Upon filing of this Stipulation and Order, or as soon thereafter as is practicable, the defendant, Kun Fuk Cheng, agrees to proceed with the sales of all current holdings of AMD stock and all current holdings of SMI stock held in the Charles Schwab Account # : XXXX-3818. The defendant, agrees to sell the stocks at market value by contacting Charles Schwab in writing and directing only the sale of AMD and SMI stock from Charles Schwab Account # : XXXX-3818..

3. Immediately following the sales of the above-named stocks, the defendant will notify the government of such sales and will provide the government with the following confirmations of the sales: the date of the sales and the gross proceeds of each sale.

4. The defendant, Kun Fuk Cheng, and the Government agree that the Restraining Order filed against Charles Schwab Account # : XXXX-3818, remains in force as to any and all other stocks in this Account and will only be temporarily relaxed, so as to allow the defendant to execute the sales of AMD and SMI stocks only. Immediately following the sales of the AMD and SMI stocks the Restraining Order will return to its full force and function restraining Charles Schwab Account # : XXXX-3818.

5. In the event the defendant breaches any of his obligations pertaining to the sales of the specific stocks listed above the government reserves the right to liquidate all restrained properties belonging to the defendant or in which the defendant has an interest and

place the proceeds from those properties in a Customs Suspense Account pending the outcome of this criminal matter.

Dated:

UNITED STATES OF AMERICA

Glenn T. Suddaby
United States Attorney
Northern District of New York

Dated: 4/26/05

By: [signature]
Thomas A. Capezza
Assistant U.S. Attorney

Dated: 4/26/05

[signature]
Kun Fuk Cheng, a/k/a Steven Cheng
Defendant

Dated: 4/26/05

[signature]
Brian W. Devane
Attorney for Kun Fuk Cheng

Dated: 4/26/05

[signature]
Jin Rong Cheng, a/k/a Joyce Cheng
Joint Tenant of Charles Schwab
Account # : XXXX-3818

Dated: 4/26/05

[signature]
Jin Rong Cheng

Dated: 4/26/05

[signature]
E. STEWART JONES, JR.
Attorney for Jin Rong Cheng

In accordance with the above Stipulation, it is hereby

ORDERED, that the defendant, Kun Fuk Cheng, shall be allowed to sell all current holdings of AMD stock and all current holdings of SMI stock currently restrained in Charles Schwab Account # : XXXX-3818. The proceeds from the sale of AMD and SMI will serve as the forfeitable res in lieu of the subject stock.

ORDERED, that immediately following the sale of the AMD and SMI stock, Charles Schwab is authorized to take the gross proceeds of the AMD and SMI stock sales, less any reasonable sales commissions and payment of any outstanding margin loans, and issue a check to U.S. Customs and Border Protection, payable to the U. S. Customs and Border Protection. The check will be sent to the attention of Special Agent Jay Hamilton at the U. S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Leo O'Brien Building, Room 746, Clinton and North Pearl Street, Albany, New York 12207. Upon receipt of the funds from the sale of the AMD and SMI stock, the funds will be placed in the Customs Suspense Account where they will remain until disposition of this criminal matter.

ORDERED, that upon filing of this Stipulation and Order, or as soon thereafter as is practicable, the defendant, Kun Fuk Cheng, will contact Charles Schwab in writing and direct Charles Schwab to execute the sales of all current holdings of AMD stock and all current holdings of SMI stock held in the Charles Schwab Account # : XXXX-3818.

ORDERED, that defendant, will sell the stocks at market value by contacting Charles Schwab and directing only the sale of AMD and SMI stock from Charles Schwab Account # : XXXX-3818.

ORDERED, that immediately following the sales of the AMD and SMI stocks, the defendant will notify the government of such sales and will provide the government with the following confirmations of the sales: the date of the sales and the gross proceeds of each sale.

ORDERED, that the Government will provide Charles Schwab with a copy of this Order so that the original Restraining Order filed against Charles Schwab Account # : XXXX-3818, will remain in effect as to all other stocks in this Account and will only be temporarily relaxed, so as to allow the defendant to execute the sales of AMD and SMI stocks only.

ORDERED, that immediately following the sales of the AMD and SMI stocks the Restraining Order will return to its original full force and effect of restraining Charles Schwab Account # : XXXX-3818.

ORDERED, that in the event the defendant breaches any of his obligations pertaining to the sales of the specific stocks listed above the government shall have the right to liquidate all restrained properties belonging to the defendant or in which the defendant has an interest and place the proceeds from those properties in a Customs Suspense Account pending the outcome of this criminal matter.

SO ORDERED,

Dated 4/28/05

Thomas J. McAvoy

HON. THOMAS J. MCAVOY
U. S. DISTRICT JUDGE